

## REMARKS

Before this Response and Amendment, claims 1-34 were pending. By this Response and Amendment, claims 1, 8, 9, 11 and 16 are amended, and claim 7 is cancelled, leaving claims 2-6, 10, 12-15, and 17-34 unchanged. Claims 5, 13, 26, and 34 were withdrawn without prejudice in a previous Amendment. Reconsideration of the claim objections and rejections in light of the present claim amendments is respectfully requested.

### Claim Objections

On pages 2 and 3 of the Office Action, claims 1 and 16 are objected to as including reference to the term “backsplash” in the preamble, but also referencing a “work surface” and a “first surface” in the body of the claim. Claim 27 is also objected to as lacking positive recitation of these elements. The Applicant respectfully submits that claims 1 and 16 only claim a backsplash, and do not claim the “work surface” and “first surface”. Claims 1 and 16 have been drafted to make this clear, by calling for “a backsplash for protecting a first surface adjacent a work surface substantially perpendicular to the first surface, the backsplash comprising”.

In this regard, the Applicants note that reference to the work surface and first surface in the body of claims 1 and 16 is relevant to the claimed structure of the backsplash, and therefore results in a structural difference with respect to prior art. For example, and with reference to claim 1, “the layer of tiles [are] coupled together for installation and removal from the first surface as a single integral unit.” This relationship between claimed and unclaimed subject matter defines a structural feature of the backsplash that must be given weight in examination, since layers of tile incapable of installation and removal from a first surface perpendicular to a work surface “as a single integral unit” are certainly possible. As another example, and with reference to claim 16, “the first mount [is] releasably coupled to the second mount to removably support the layer of protective material upon the first surface in an orientation substantially perpendicular to the work surface”. This relationship between claimed and unclaimed subject matter also defines a structural feature of the backsplash that must be given weight in examination, since first and second mount portions incapable of removably supporting a layer of protective material upon a first surface in an orientation “substantially perpendicular to a work surface” are certainly possible.

Finally, the Applicants respectfully submit that claim 27 need not include positive recitation of elements such as “backsplash” and “first surface” in the manner suggested on page 3 of the Office Action. In particular, the Applicants note that “[a]n element in a claim for a combination may be expressed as a ... step for performing a specified function without the recital of structure, material, or acts in support thereof.” 35 U.S.C. §112, ¶6. Accordingly, the Applicants respectfully submit that claim 27 is in proper form without the need to recite the structure suggested on page 3 of the Office Action.

In light of the above remarks, the Applicants respectfully request withdrawal of the objections to claims 1, 16, and 27.

### 35 U.S.C. § 102 Rejections

On pages 3-5 of the Office Action, claims 1-4, 6, 14, and 15 are rejected under 35 U.S.C §102(b) as being anticipated by Han (U.S. Patent No. 5,816,005).

Claim 1 is hereby amended, and calls for:

A backsplash for protecting a first surface adjacent a work surface substantially perpendicular to the first surface, the backsplash comprising:

a layer of tiles having a front surface exposed and resistant to byproducts of work performed on the work surface when the backsplash is in a mounted position upon the first surface, the layer of tiles coupled together for installation and removal from the first surface as a single integral unit;

a first mount on a rear of the backsplash; and

a second mount adapted to be coupled to the first surface;

the first mount releasably and removably engagable with the second mount for removably mounting the backsplash to the first surface in at least one location between the backsplash and the first surface, the first and second mounts retaining the layer of tiles in a substantially perpendicular relationship with respect to the work surface when the backsplash is in the mounted position upon the first surface. (Amendment marks not shown).

In contrast, Han discloses pre-fabricated tile boards and the use of multiple tile boards in example installations, wherein each tile board is secured to a surface by screws that are passed through pre-drilled holes in the tile board and are eventually covered with mortar or other such “layered material” in which ceramic or marble tile is seated. Nothing about the tile boards installed according to the disclosure of Han teaches or suggests, among other things, a first mount releasably and removably engagable with a second mount for removably mounting the tile board to a surface. Indeed, and as discussed with the Examiner in the January 23, 2007 Examiner’s Interview with the undersigned Applicant’s Representative, it is clear

that the tile boards disclosed by Han are intended to be permanently secured by the screws to a surface, particularly in light of the fact that the ceramic or marble tiles appear to be permanently secured in place with mortar or similar material.

The fact that the tile boards taught by Han are not adapted to be releasably or removably installed is also evidenced by the fact that Han notes the need for grout between adjacent tiles (and therefore, between adjacent tile boards). One having ordinary skill in the art would recognize that proper installation of the tile boards requires that seams between and adjacent tile boards must be caulked and/or filled with mortar, thereby resulting in a structure that is impervious to water. However, such a structure is inherently not adapted or adaptable for being releasably and removably installed – regardless of the type of mount used for the tile boards.

Also, Han fails entirely to teach, describe, or suggest a first mount on a rear of a tile board and a second mount releasably and removably engagable with the first mount and adapted to be coupled to a surface. Han only discloses the use of screws for fastening and leveling the tile boards to a surface. The fact that the tile boards are intended to be permanently (and not releasably or removably) attached to a surface runs counter to the need, desire, or utility for first and second mounts releasably and removably engagable with respect to one another.

In light of the above remarks, and for other reasons not discussed herein, withdrawal of the 35 U.S.C. §102(b) rejection of claim 1 is respectfully requested.

Claims 2-4, 6, and 14-15 are each ultimately dependent upon amended claim 1, and are therefore allowable based upon amended claim 1 and upon other features and elements claimed in claims 2-4, 6, and 14-15, but not discussed herein. Withdrawal of the 35 U.S.C. §102(b) rejections of claims 2-4, 6, and 14-15 is therefore respectfully requested.

#### 35 U.S.C. § 103 Rejections

On page 5-8 of the Office Action, claims 7-12, 16-25, 27-30, 32, and 33 are rejected under 35 U.S.C. §103(a) as being unpatentable over Han in view of Breslow (U.S. Patent No. 3,672,622). Also, on pages 5 and 8-9 of the Office Action, claim 31 is rejected under 35 U.S.C. §103(a) as being unpatentable over Han in view of Breslow, and further in view of Dills (U.S. Patent No. 3,514,578).

Claim 16 is hereby amended, and calls for:

A backsplash for protecting a first surface adjacent a work surface substantially perpendicular to the first surface, the backsplash comprising:

a layer of protective material having a front surface exposed and resistant to byproducts of work performed on the work surface when the backsplash is in a mounted position upon the first surface;

a first mount recessed within a rear of the backsplash; and

a second mount adapted to be coupled to the first surface, the first mount releasably coupled to the second mount to removably support the layer of protective material upon the first surface in an orientation substantially perpendicular to the work surface,

wherein the first and second mounts are shaped to retain the layer of protective material against the first surface when the first mount is coupled to the second mount.  
(Amendment marks not shown).

Claim 27 calls for:

A method of releasably coupling a backsplash to a first surface adjacent a work surface substantially perpendicular to the first surface, the method comprising:

mounting a first mount to the first surface;

releasably coupling a second mount on the back of the backsplash to the first mount;

drawing the backsplash to a substantially flush position against the first surface by coupling the second mount to the first mount; and

releasably supporting the backsplash upon the first mount in a substantially perpendicular orientation with respect to the work surface.

In contrast, and as discussed above, Han discloses pre-fabricated tile boards and the use of multiple tile boards in example installations, wherein each tile board is secured to a surface by screws that are passed through pre-drilled holes in the tile board and are eventually covered with mortar or other such “layered material” in which ceramic or marble tile is seated. Nothing about the tile boards installed according to the disclosure of Han teaches or suggests, among other things, a first mount releasably and/or removably engagable with or coupled to a second mount (e.g., for removably mounting the tile board to a surface as claimed in claim 16, or for any other reason). In this regard, the Applicants agree with the Examiner’s statement that “Han does not disclose first and second mounts as claimed” (page 7 of the Office action).

Breslow has been cited for the purpose of disclosing two brackets 1, 1a that could be used to mount a backsplash to a surface. However, as discussed in the January 23, 2007 Examiner’s Interview with the undersigned Applicant’s Representative, the Applicants respectfully submit that one having ordinary skill in the art would not utilize the brackets 1, 1a of Breslow in conjunction with the tile boards of Han as suggested in the Office Action. First, the tile boards of Han are mounted using screws passed

through pre-drilled holes in the tile boards. This method of mounting the tile boards is used “for fastening and leveling the boards to the surface to which they are to be placed.” (Han, column 4, lines 10-12).

There is no indication that the tile boards could be leveled using the brackets 1, 1a of Breslow. In fact, the obliquely protruding tongues 2, 3, 4 and 2a, 3a, 4a of the brackets 1, 1a would appear to interfere with leveling, as the process of increasing or decreasing the distance between the tile boards and the surface would cause the tile boards to shift in an upward or downward direction due to interference between tongues 1, 2, 3 and 1a, 2a, 3a. In short, if an installer would attempt to use the brackets 1, 1a to mount the tile boards, the installer would be unable to level the tile boards. This inability would defeat a primary purpose of the tile board structure of Han, as any tile setter of ordinary skill in the art would recognize that tile leveling is a critical part of proper tile installation.

Also, and as discussed in greater detail above in connection with amended claim 1, the tile boards of Han are intended to be permanently installed. In this regard, proper installation of the Han tile boards results in a structure that is impervious to water and other matter (including water leakage between adjacent tiles, between adjacent tile boards, and between tile boards and adjacent structure). Such requirements are inherent in tile applications, as they prevent damage to underlying and adjacent structures, and insure the ability to keep tiled surfaces clean. To modify the Han tile boards so that they can be releasably and/or removably installed on a surface as claimed in claims 16 and 27 would compromise the seams between and/or adjacent tile boards, thereby promoting leakage and resulting in a structure that is difficult or impossible to clean. This is the case regardless of the type of elements (e.g., brackets 1, 1a) used to releasably and/or removably mount the tile boards.

Even if the brackets 1, 1a of Breslow were used in conjunction with the tile boards of Han (and as discussed above, the Applicants respectfully submit that this is not the case), the Applicants note that neither Han nor Breslow teach, describe, or suggest a mount recessed within a rear of a backsplash as claimed in amended claim 16, 27, nor a step of drawing a backsplash to a substantially flush position against a surface by coupling mounts together as claimed in claim 27. In this regard, Breslow only teaches or suggests brackets 1, 1a that leave a gap between the article to be hanged 12 and the surface upon which the article is hanged (see Fig. 2 of Breslow). Neither Han nor Breslow suggest any value or purpose of recessing either bracket 1, 1a within the back of an article to be hanged, nor any value or purpose of drawing the article to a flush position against a surface. The Applicants respectfully submit that such a modification of Han and Breslow is only identified by hindsight reconstruction in light of the present invention as claimed in claims 16 and 27.

In light of the above remarks, and for other reasons not discussed herein, withdrawal of the 35 U.S.C. §103(a) rejections of claims 16 and 27 is respectfully requested.

Claims 7-12, 17-25, and 28-33 are each ultimately dependent upon claims 1, 16, and 27, respectively, and are therefore allowable based upon claims 1, 16, and 27, and upon other limitations claimed in claims 7-12, 17-25, and 28-33 but not discussed herein. Withdrawal of the 35 U.S.C. 103(a) rejections of claims 7-12, 17-25, and 28-33 is therefore respectfully requested.

### CONCLUSION

In view of the foregoing, the Applicants respectfully request entry of the present Amendment and allowance of claims 1-4, 6, 8-12, 14-25 and 27-33. If any issues remain outstanding upon entry of this Amendment, the Examiner is respectfully requested to telephone the undersigned Applicants' Representative at (414) 225-8266.

Respectfully submitted,



Christopher B. Austin  
Reg. No. 41,592

Docket No.: 018695-9337-00  
Michael Best & Friedrich LLP  
100 East Wisconsin Avenue  
Suite 3300  
Milwaukee, Wisconsin 53202-4108  
414.271.6560

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